

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

OSSIE SANTIAGO, an individual California
resident, on behalf of himself and all others
similarly situated,

Plaintiff,

v.

INTUIT, INC., a Delaware corporation;
GOOGLE, INC., a Delaware corporation; and
DOES 1 through 100, inclusive,

Defendants.

Case No.: 5:12-CV-01262-LHK

ORDER GRANTING MOTION TO
COMPEL ARBITRATION;
DISMISSING CASE WITHOUT
PREJUDICE

Plaintiff Ossie Santiago (“Plaintiff”) filed a complaint against Intuit, Inc. (“Intuit”), Google, Inc. (“Google”), and Does 1 through 100, inclusive (collectively, “Defendants”), on March 14, 2012. *See* ECF No. 1. On April 20, 2012, the case was reassigned to the undersigned judge. ECF No. 6. On April 25, 2012, the Court related the above captioned case to *In re: High Tech Employee Antitrust Litigation*, 11-CV-2509-LHK. ECF No. 11. On April 25, 2012, Intuit filed a motion to compel arbitration and to dismiss, or in the alternative stay proceedings. ECF No. 8. On June 1, 2012, Google filed a motion to dismiss Plaintiff’s complaint pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). ECF No. 15. Plaintiff failed to respond to either motion.

As a result of Plaintiff’s failure to respond to Defendants’ two motions, On July 23, 2012, the Court issued an Order to Show Cause Why Case Should Not Be Dismissed For Failure to

1 Prosecute (“OSC”). ECF No. 22. The Court ordered Plaintiff to respond by August 13, 2012, and
2 to appear at an OSC hearing on August 30, 2012.

3 Plaintiff failed to respond to the OSC by August 13, 2012, as ordered. Instead, on August
4 23, 2012, ten days after the response deadline, Plaintiff filed a response stating that: (1) he was not
5 aware that his OSC response deadline was August 13, 2012; and (2) he does not oppose Defendant
6 Intuit’s motion to compel arbitration, provided the case is dismissed without prejudice so that the
7 parties can pursue arbitration. Plaintiff has no excuse for filing an untimely response to the OSC,
8 as he is represented by counsel and received ECF notice on July 23, 2012, of the Court’s OSC and
9 the OSC response deadline. However, because neither Defendant has yet served an answer or a
10 motion for summary judgment, Plaintiff may dismiss this action without prejudice without court
11 order pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i). Accordingly, Defendant Intuit’s
12 Motion to Compel is GRANTED; this action is DISMISSED without prejudice; and Defendant
13 Google’s Motion to Dismiss is DENIED as moot. The OSC hearing set for August 30, 2012, is
14 accordingly VACATED. The Clerk shall close the file.

15 **IT IS SO ORDERED.**

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17 Dated: August 29, 2012

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19 LUCY H. KOH
20 United States District Judge
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